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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-29

JOHN H. WILKERSON and BARBARA WILKERSON, His Wife,
Petitioners,

vs.

DAVID E. MURRAY, Director of Public Works, and ST. LOUIS COUNTY, MISSOURI, a Body Corporate and Politic,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Missouri

BRIEF OF RESPONDENTS IN OPPOSITION

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OPINION BELOW

The opinion of the Missouri Supreme Court is reported at 463 S.W.2d 821. (Petition, Appendix p. A-1.)

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

A. Whether a zoning ordinance residence district regulation which excludes the location and occupancy of a house trailer as a residence within the district deprives

petitioners of their property without due process of law, where petitioners own both a house trailer and a single family residence lot?

B. Whether a zoning ordinance definition which distinguishes between "dwelling" and "house trailer" and therefore excludes the location and occupancy of a house trailer as a residence in a single family residence district is unreasonable within the meaning of the equal protection clause of the Fourteenth Amendment?

ORDINANCE PROVISIONS INVOLVED

Section 1003.020, St. Louis County Revised Ordinances 1964, as amended:

> (20) Dwelling: Any building, or portion thereof, used exclusively for human habitation, except hotels, motels or house trailers.
>
> (22) Dwelling, Single Family: A building designed for or occupied exclusively by one family.
>
> (41) House-Trailer: A self-contained mobile structure intended to be used for dwelling purposes which has been or recently may be equipped with other wheels or other devices for transporting said structure.

Section 1003.119, St. Louis County Revised Ordinances 1964, as amended—**"R-5" Residence District Regulations —1.** This section contains the district regulations of the "R-5" Residence District. These regulations are supplemented and qualified by additional general regulations appearing elsewhere in this Chapter which are incorporated as part of this section by reference.

2. Permitted Land Uses and Developments:

(1) Single family dwellings.

(2) Churches.

(3) Public or private kindergarten, elementary, secondary, and collegiate schools.

(4) Nursery schools and day nurseries.

(5) Public and private not-for-profit parks, parkways and playgrounds.

(6) Home occupations.

(7) Information and directional signs.

(8) Fire stations.

(9) Local public utility facilities, provided that any installation, other than poles and equipment attached thereto, shall be adequately screened with landscaping, fencing or walls, or any combination thereof, or shall be placed underground, or shall be enclosed in a structure in such a manner as to blend with and complement the character of the surrounding area. All plans for screening said facilities shall be submitted to the St. Louis County Planning Commission for review. No building permit or installation permit shall be issued until said plans have been approved by the St. Louis County Planning Commission,

(10) Public and private not-for-profit libraries.

(11) Accessory buildings, land uses and activities customarily incident to any of the above uses. Accessory use may include a septic tank, approved by the County Health Department, which shall not exceed 5,000 gallons per day flow, serving an individual dwelling, or non-residential use.

STATEMENT OF CASE

Petitioners' brief adequately sets forth the statement of the case.

ARGUMENT AGAINST GRANTING THE WRIT

A

Petitioners contend that section 1003.119 of the St. Louis County Revised Ordinances, 1964, as amended, is unconstitutional solely on the grounds that a particular use is excluded from the "R-5" Residence District, namely the location and occupancy of a house trailer as a residence within this district. The Petition further alleges that this regulation deprives them of their property without due process of law. It is patently clear from the record that petitioners have not been deprived of any significant property value due to the enactment of the zoning regulation in question. The land owned by them is still useable by them or others on the same terms as it was when purchased, and has not been rendered valueless by any action of respondents. Petitioners rather seek to raise issues based on their inability to make a particular use of the property, but have not established that economic injury has been done to them.

The rights of a municipality to adopt a comprehensive zoning plan as an exercise of its police power were well established by this Court in **Euclid v. Ambler Realty Co.**, 272 U.S. 365 (1926). The fact that a comprehensive zoning plan establishes a district in which a particular use is not permitted is not in itself a violation of the constitutional provision that "no person shall be deprived of life, liberty or property without due process of law." **State ex rel. Oliver Cadillac Co. v. Christopher**, 298 S.W. 720 (Mo. 1927). Accordingly, petitioners hold their property subject to applicable zoning regulations which establish the use classification for the property in question. The Fourteenth Amendment does not insulate private property from zoning regulations enacted by respondents' legislative body pursuant to its police power in order to protect the public health, safety, morals or general welfare of the com-

munity. **Euclid v. Ambler Realty Co.**, 272 U.S. 365 (1926). See also Anderson, **American Law of Zoning**, section 2.10, pages 53 and 54.

The Missouri Supreme Court's decision in this case was one of first impression and concluded that the "ordinance here in question bears substantial relationship to the public health, safety, morals or general welfare; that it is not clearly arbitrary and unreasonable, and hence is not unconstitutional" (Petition, Appendix, p. A-4). The court's decision followed a well-accepted line of authority which has concluded that zoning ordinance provisions prohibiting the location and occupancy of house trailers as residences within districts zoned "Residential" bear a substantial and direct relationship to the public health, safety and morals and general welfare of the community and therefore falls within the perimeter of the due process clause of the Fourteenth Amendment. **Napierkowski v. Gloucester Tp.**, 150 A.2d 481 (N.J. 1959); **Huff v. City of Des Moines**, 56 N.W.2d 54 (Ia. 1952); **Davis v. City of Mobile**, 16 So.2d 1 (Ala. 1943); **Cooper v. Sinclair**, 66 So.2d 702 (Fla. 1953); **Town of Manchester v. Philips**, 180 N.E.2d 333 (Sup.Jud. Ct. Mass. 1962); **Fishman v. Tupps**, 257 P.2d 579 (Colo. 1953).

Petitioners on page [illegible] of their brief contend that modern mobile homes are [illegible]distinguishable from small houses. However, petitioners have failed to cite to the Court any portion of the record which supports this position. In fact, the record does not indicate whether petitioners propose to locate on the property in question a "typical modern mobile home." Another essential point of petitioners' argument refers to a purported "aesthetic" purpose of the ordinances in question. Once again there is nothing in the Stipulation of Facts upon which this case rests to sustain this proposition. In fact, this particular issue was categorically rejected by the Missouri Supreme Court in its decision (Petition, Appendix p. A-7).

B

Respondents' zoning ordinance definition of "dwelling" excludes from its coverage a "house trailer". [section 1003.020 (20), St. Louis County Revised Ordinances 1964, as amended.] The term "house trailer" is defined as a self-contained mobile structure and intended to be used for dwelling purposes which has been or recently may be equipped with wheels or other devices for transporting such structure. [section 1003.020 (41), St. Louis County Revised Ordinances 1964, as amended.] Under the zoning ordinance definitions of "dwelling" and "house trailer" a house trailer may not be located and occupied as a residence within the "R-5" residence district. Respondents' comprehensive zoning plan specifically provides for the location of a house trailer as a residence in a house trailer park. [section 1003.107, St. Louis County Revised Ordinances 1964, as amended.]

The decision of the Missouri Supreme Court recognized that there are a number of valid reasons for such zoning (Petition, Appendix p. A-6). The decisions of other jurisdictions which have considered this matter have concluded that the exclusion of a house trailer from the definition of "dwelling" is a constitutional exercise of the police power and is not arbitrary, capricious or unreasonable. **Town of Manchester v. Philips**, 180 N.E.2d 333 (Sup.Jud. Ct. Mass. 1962); **City of New Orleans v. Louviere**, 52 So.2d 751 (La. Ct. App. 1951); **Town of Marblehead v. Gilbert**, 137 N.E. 2d 1921 (Sup. Jud. Ct. Mass. 1956); **Inhabitants of Town of Windham v. Sprague**, 219 A.2d 548 (Sup. Jud. Ct. Md. 1966); **Town of Livingston v. Marchev**, 205 A.2d 65 (N.J. 1964).

Petitioners have not cited to this Court any authority which supports their contention that the definition of "dwelling" is unreasonable within the meaning of the equal protection clause of the Fourteenth Amendment.

The cases cited on page 8 of the Petition concern instances where a court was required to determine whether a structure falls within the zoning ordinance definition of "dwelling". In fact, none of the cases cited considered any of the constitutional questions raised by the Petition.

Accordingly, based on the record before this Court, there is no evidence which respondents feel could support a finding that zoning ordinance definition of "dwelling" the effect of which is to exclude the location and occupancy of a house trailer as a residence within a residential district and requires such use to be located in a house trailer park is violative of any Fourteenth Amendment guarantees or is arbitrary, capricious and unreasonable. The cases cited by respondents clearly support the enactment of this type of zoning ordinance. The record of this case is devoid of any evidence which supports petitioners' argument with regard to "discrimination on the basis of petitioners' economic status" (Petition, page 10).

CONCLUSION

For the reasons above stated, respondents submit that a writ of certiorari should not issue to review the judgment and opinion of the Supreme Court of Missouri.

Respectfully submitted

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